

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODYCLERK OF COURT  
JUL 27 2 11:53  
MAGISTRATE JUDGE Alexander

United States District Court		District	MASSACHUSETTS
Name of Movant	<u>Victor LABOY</u>	Prisoner No.	<u>21802-038</u>
Place of Confinement	<u>Fort Dix FEDERAL CORRECTIONAL INSTITUTION</u>		
		Case No.	<u>00-CR-10029-NG</u>

UNITED STATES OF AMERICA

**05 11360 NG**  
(name under which convicted)

## MOTION

1. Name and location of court which entered the judgment of conviction under attack UNITED STATES District Court BOSTON MASSACHUSETTS
2. Date of judgment of conviction 3/20/02
3. Length of sentence 168 Months
4. Nature of offense involved (all counts) Distribution of Heroin

## 5. What was your plea? (Check one)

- (a) Not guilty ☐
- (b) Guilty ☒
- (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N-A

## 6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐
- (b) Judge only ☒ N-A

## 7. Did you testify at the trial?

Yes ☐ No ☒ N-A

## 8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

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9. If you did appeal, answer the following:

- (a) Name of court U.S. OF APPEAL From THE <sup>First</sup> ~~9th~~ Circuit
- (b) Result Affirmed
- (c) Date of result December 10, 03

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?  
 Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a)(1) Name of court N-A
- (2) Nature of proceeding N-A

- (3) Grounds raised N-A

- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes ☐ No ☒

- (5) Result N-A

- (6) Date of result N-A

(b) As to any second petition, application or motion give the same information:

- (1) Name of court N-A

- (2) Nature of proceeding N-A

- (3) Grounds raised N-A

- (4) Date of result N-A

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(4) Did you receive an evidentiary hearing on your petition, application or motion? N-A  
 Yes ☐ No ☒

(5) Result NA

(6) Date of result NA

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒ N-A

(2) Second petition, etc. Yes ☐ No ☒ N-A

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N-A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (f) or any one of the grounds.

(a) Claim that you obtained the present conviction which is and ever fully and justly convicted and sentenced only in violation of the

(b) Claim that the conviction is based on an error of the law

(c) Claim that the conviction is based on an error of fact

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: THE PETITIONER'S SIXTH AMENDMENT RIGHT TO TRIAL BY JURY  
WAS VIOLATED PURSUANT TO BLAKELY V. WASHINGTON, AND BOOKER V. UNITED STATES.

Supporting FACTS (state briefly without citing cases or law) THE COURT ERRED WHEN THE  
PETITIONER WAS SENTENCED PURSUANT TO 'RELEVANT CONDUCT',  
WHICH WAS NOT LISTED IN THE INDICTMENT NOR FOUND BEYOND A  
REASONABLE DOUBT, IN ADDITION TO THE COURT FAILING TO CONSIDER  
THE 18 U.S.C. § 3553(a) FACTORS. (LEADERSHIP ROLE ENHANCEMENT)

B. Ground two: N/A

Supporting FACTS (state briefly without citing cases or law): N/A

C. Ground three: N/A

Supporting FACTS (state briefly without citing cases or law): N/A

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(e) On appeal

N/A

(f) In any post-conviction proceeding

N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

(b) Give date and length of the above sentence:

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

23 JUNE 2005

(Date)

Victor Laboy

Signature of Movant

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

FILED  
JUN 27 P 1:53

UNITED STATES OF AMERICA

vs.

Victor LABOY SR

CRIMINAL NUMBER:

00-10029 NG

PRO SE CERTIFICATE OF SERVICE

I, Victor LABOY, Petitioner herein, do hereby certify that an original and two copies of the foregoing filing has been furnished upon the Office of Clerk for the United States District of :

OFFICE OF THE CLERK  
U.S. DEPARTMENT OF JUSTICE  
UNITED STATES DISTRICT COURT  
DISTRICT OF

And a true and correct copy has been furnished upon the Office of the United States Attorney for the District of :

ASSISTANT UNITED STATES ATTORNEY  
UNITED STATES ATTORNEY  
DEPARTMENT OF JUSTICE  
DISTRICT OF

I declare under penalty of perjury that the foregoing is true and correct. Executed on this day June of 23, 2005

Victor Laboy

D.

Ground four:

N/A

Supporting FACTS (state *briefly* without citing cases or law)

N/A

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

N/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐

No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing

JONATHAN SHAPIRO 90 CANAL STREET

BOSTON MASSACHUSETTS 02114-2022

(b) At arraignment and plea

(c) At trial

N/A

(d) At sentencing